

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Registration No. 2,684,138: PAVERCAT
Registered on the Principal Register on February 4, 2003, in International Class 7

CATERPILLAR INC.

Petitioner,

v.

PAVE TECH, INC.,

Respondent.

Cancellation No. 41,776

MOTION FOR ENTRY OF STIPULATION AND PROTECTIVE ORDER

Both parties in the above-identified proceeding believe that certain materials and information disclosed during the course of discovery may be considered confidential, a trade secret, or commercially sensitive by a party or a witness and the parties have stipulated, pursuant to 37 C.F.R. § 2.120(f) and Rule 26(c) of the Federal Rules of Civil Procedure, that all such secrets and other confidential information shall be disclosed pursuant to the terms of the Stipulation and Protective Order attached hereto. Therefore, the Petitioner, Caterpillar Inc., moves with the consent of the Respondent, Pave Tech, Inc., for the entry of the attached Stipulation and Protective Order.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,
HILLIARD & GERALDSON

By:

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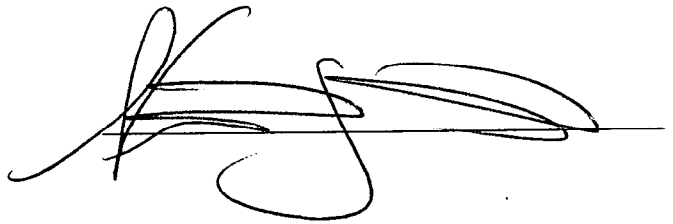
Attorneys for Petitioner

09-22-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #39

CERTIFICATE OF SERVICE

I, hereby certify that a copy of the foregoing **MOTION FOR ENTRY OF STIPULATION AND PROTECTIVE ORDER** was served upon Michael J. O'Loughlin, MICHAEL J. O'LOUGHLIN & ASSOCIATES, PA, 1012 Grain Exchange Building, 400 South Fourth Street, Minneapolis, MN 55415, via facsimile and first class mail postage prepaid on September 16, 2003.

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a horizontal line and a large, stylized 'S'.

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CATERPILLAR INC.)	
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)	
PAVE TECH, INC.,)	
)	
Respondent.)	
)	

STIPULATION AND PROTECTIVE ORDER

Subject to the provisions of Rule 26(c) of the Federal Rules of Civil Procedure and Rules 2.27 and 2.120(f) of the Trademark Rules of Practice, the parties, through their respective attorneys, stipulate that certain information disclosed by any party hereto during the discovery or testimony periods in this proceeding, or during subsequent appeals, may contain items constituting confidential information or trade secrets of the disclosing party.

In order to preserve the status of the material and information so disclosed, the parties agree and the Board orders that:

1. All discovery in this proceeding shall be used solely for the presentation of claims or defenses in this proceeding. No party or person shall, for purposes other than the presentation of such claims and defenses, disclose or make use of any confidential information obtained from any opposing party in this proceeding.
2. Each party producing information during this proceeding which it considers to be confidential may designate such information in accordance with the categories for treatment set forth below:



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A. "CONFIDENTIAL." Only information believed in good faith to constitute confidential business information or trade secrets of the producing party may be designated as "CONFIDENTIAL." Access to information designated "CONFIDENTIAL" by the producing party shall be permitted by the receiving party only to in-house and outside counsel for such party, their associates, clerks, legal assistants, clerical, secretarial and support staff, as necessary, and to the additional individuals described below, provided each such individual has read this Stipulation and Protective Order in advance of disclosure and agreed in writing to be bound by its terms: (i) persons employed by the receiving party who are required to participate in policy decisions with reference to this proceeding; and (ii) experts retained or consulted by a party for the purposes of this proceeding.

B. "ATTORNEYS' EYES ONLY." Only information believed in good faith to be highly sensitive confidential business information or trade secrets of the producing party may be designated "ATTORNEYS' EYES ONLY." Access to information which has been designated "ATTORNEYS' EYES ONLY" by the producing party shall be permitted by the receiving party only to (1) outside counsel in this proceeding, their associates, clerks, legal assistants, clerical, secretarial and support staff, as necessary, (2) the receiving party's Senior Trademark Counsel and (3) outside experts retained or consulted by a party for the purposes of this proceeding (provided that such experts read this Stipulation and Protective Order and agree in writing to be bound by its terms).

3. Information which is designated either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall be maintained in confidence in accordance with the terms of this stipulation and order and shall be used only for the purposes of this proceeding.

4. If it is necessary for a receiving party to file documents, discovery responses or deposition excerpts which have been designated by the opposing party "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" with the Board, all such materials, and all pleadings or memoranda which reproduce or paraphrase the information contained in such materials, shall be filed under seal with the Board in sealed envelopes or other suitable containers bearing a title of the action and a statement substantially in the following form:

CONFIDENTIAL
SUBJECT TO STIPULATION AND PROTECTIVE ORDER

This envelope contains documents which have been designated "CONFIDENTIAL" pursuant to a Stipulation and Protective Order filed in this case by the parties and ordered by the Board. The envelope is not to be opened nor the contents thereof to be displayed or revealed except by Order of the Board.

If only a portion of the information contained in a pleading or memorandum is subject to designation as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY", a duplicate copy of such pleading or memorandum shall be filed with the Board or the Court in redacted form for placement in files which are open to public inspection. Only information subject to designation as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" pursuant to paragraph 2 may be redacted from this duplicate copy.

5. The restrictions set forth in any of the preceding paragraphs shall not apply to information which: (a) is, or becomes, public knowledge as demonstrated by publicly available writings, other than through violation of this Stipulation and Protective Order; (b) is acquired by a non-designating party from a third party lawfully possessing such information and lawfully permitted to disclose such information; or (c) was lawfully possessed by a non-designating party prior to discovery in this lawsuit as evidenced in writing. Any person who was an author or recipient of a document designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" may

be shown the document for the purpose of interrogation of such person by deposition or in preparation for a deposition.

6. Nothing herein shall be construed as preventing counsel for any party from rendering advice to the party based on confidential information, as long as the confidential information is not disclosed.

7. The parties agree that the mere designation of a document by counsel or a party as being "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" cannot alter or enhance the nature of that document or its confidential nature or create any presumption of confidentiality.

8. If the non-producing party concludes that for the purpose of this proceeding it needs to disclose any of the confidential information in a manner not contemplated herein, it shall request counsel for the producing party to release said confidential information from this Stipulation and Protective Order. If counsel does not agree to such release, counsel for the non-producing party shall have the right to bring before the Board at any time the question of whether any particular document or information is confidential or whether its use should be restricted, or to move for an order releasing said confidential information from this Stipulation and Protective Order for good cause shown, in which case it shall be the burden of the designating party to prove that the challenged information is confidential or to present a motion to the Board under Fed R. Civ. P. 26(c) for a separate protective order as to any such particular document or information, including restrictions differing from those specified herein.

9. Every document or discovery response which a producing party wishes to designate "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" shall be so marked in a conspicuous manner on each page prior to production or response to the opposing party. Each party may designate the entire transcript or a portion of the transcript of the deposition of one of

its officers, employees or agents to be either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" if it appears that the deposition will involve topics appropriate for such designation. Such designation shall expire 30 days after the designating party has received a copy of the transcript of the deposition unless, during such 30 day period, the designating party advises the other party in writing of the specific pages of the transcript which are designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." Alternatively, the party may designate information disclosed at a deposition as confidential by notifying opposing counsel in writing within thirty (30) days of receipt of the transcript or the specific paper or lines of the transcript which are confidential.

10. Within 30 days of the final termination of this proceeding and all subsequent appeals, each receiving party shall, upon request, return to each producing party or destroy all copies, digests or summaries which have been made of, or prepared from, materials which have been designated by the producing party as either "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." The receiving party's outside counsel may retain one record copy of any documents or other materials designated "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

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